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May 5, 2004

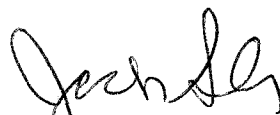
John Ashcroft, U.S. Attorney General
Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Re: *Northern California River Watch v. Atlantic Richfield Company, et al*
United States District Court Case No: C03-5908 JSW

Dear Attorney Ashcroft:

In accordance with Clean Water Act requirements, we are herewith serving your offices with a copy of the First Amended Complaint in the above-entitled action, electronically filed by this office with the U.S. District Court, Northern District of California on May 4, 2004.

Sincerely,


Jack Silver

JS:lh
Enclosure

1 Jack Silver, Esq. SBN #160575
2 David Weinsoff, Esq. SBN #141372
3 Northern California Environmental Defense Center
4 P.O. Box 5469
5 Santa Rosa, California 95402-5469
6 Tel. (707) 528-8175
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8 Attorneys for Plaintiff
9 NORTHERN CALIFORNIA RIVER WATCH

10
11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA

13 NORTHERN CALIFORNIA RIVER
14 WATCH, a non-profit corporation,

15 Plaintiff,

16 v.

17 ATLANTIC RICHFIELD COMPANY,
18 and DOES 1-10, Inclusive,

19 Defendants.

CASE NO: C03 5908 JSW

20 FIRST AMENDED COMPLAINT
21 FOR INJUNCTIVE RELIEF,
22 CIVIL PENALTIES, RESTITUTION
23 AND REMEDIATION

24 [Resource Conservation & Recovery Act
25 (RCRA) 42 U.S.C. § 6901 et seq.;
26 California Safe Drinking Water & Toxic
27 Enforcement Act of 1986, California
28 Health & Safety Code § 25249.5
et seq; (Proposition 65)]

29 NOW COMES Plaintiff, NORTHERN CALIFORNIA RIVER WATCH (hereafter,
30 "PLAINTIFF") by and through its attorneys, and for its complaint against Defendants,
31 ATLANTIC RICHFIELD COMPANY and DOES 1-10, inclusive (hereafter,
32 "DEFENDANTS"), states as follows:

33 I. INTRODUCTION

34 1. This is a civil suit brought against DEFENDANTS under the citizen suit enforcement
35 provisions of the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq (hereafter,
36 "RCRA"); and California's Safe Drinking Water & Toxic Enforcement Act of 1986, Health &
37 Safety Code § 25249.5 et seq. (hereafter, "Proposition 65"). This complaint seeks relief for
38

1 DEFENDANTS' discharge of pollution from their current or former retail gasoline station
2 facilities or properties located at 56 South Weed Boulevard, Weed, California; 712 Lewelling
3 Boulevard, San Leandro, California; 899 Rincon Avenue, Livermore, California; 731 West
4 MacArthur Boulevard, Oakland, California; and 785 East Stanley Boulevard, Livermore,
5 California (hereafter collectively, "Facilities"), into the waters of the State of California and the
6 United States in violation of the above-enumerated statutes and laws.

7 2. By this Complaint, PLAINTIFF seeks:

8 a. To enjoin DEFENDANTS from discharging pollutants from their Facilities into
9 the ground and surface waters surrounding and downstream of their Facilities;

10 b. A court order directing DEFENDANTS to comply with the substantive and
11 procedural requirements of the above enumerated statutes and laws;

12 c. A court order directing DEFENDANTS to pay civil penalties or establish
13 remediation projects in lieu of penalties for violations of the above enumerated statutes and
14 laws;

15 d. A court order directing DEFENDANTS to reimburse PLAINTIFF for its
16 reasonable costs of suit, including attorney's fees, as allowed under § 7002(e) of RCRA, 42
17 U.S.C. § 6972(e), and California Code of Civil Procedure § 1021.5.

18 II. JURISDICTION

19 3. This Court has subject matter jurisdiction over all Federal causes of action in this
20 Complaint pursuant to RCRA § 7002(a)&(b), 42 U.S.C. § 6972 (a)&(b) and 28 U.S.C. § 1221
21 (an action for declaratory and injunctive relief arising under the Constitution and laws of the
22 United States). This Court has supplemental jurisdiction over all State based causes of action
23 in this Complaint pursuant to 28 U.S.C. § 1367, as those claims form part of the same case or
24 controversy as the Federal causes of action.

25 4. On or about May 8, 2003, PLAINTIFF provided notice of DEFENDANTS' violations
26 of RCRA and of its intent to file suit against DEFENDANTS (hereafter, "RCRA Notice") to
27 the Administrator of the United States Environmental Protection Agency (hereafter, "EPA"),
28

1 the Administrator of the Environmental Protection Agency - Region IX, the Executive Director
2 of the State Water Resources Control Board, the Executive Director of the California Integrated
3 Waste Management Board, and the DEFENDANTS, as required by RCRA. A true and correct
4 copy of the RCRA Notice letter is attached hereto as Exhibit A and fully incorporated into this
5 Complaint.

6 5. On or about May 8, 2003, PLAINTIFF provided notice of DEFENDANTS' violations
7 of Proposition 65 at its Facilities at 56 South Weed Boulevard, Weed, California; 712 Lewelling
8 Boulevard, San Leandro, California; 899 Rincon Avenue, Livermore, California; 731 West
9 MacArthur Boulevard, Oakland, California; and 785 East Stanley Boulevard, Livermore,
10 California; and of its intent to file suit against DEFENDANTS, to the Attorney General of
11 California, the district attorney of the county in which DEFENDANTS have violated
12 Proposition 65, and the DEFENDANTS, as required by Proposition 65 (hereafter, "Proposition
13 65 Notice"). A true and correct copy of the Proposition 65 Notice letter is attached hereto as
14 Exhibit B and fully incorporated into this Complaint.

15 6. Members and supporters of PLAINTIFF reside in the vicinity of, derive livelihoods
16 from, own property near, and/or recreate on, in or near, and/or otherwise use, enjoy and benefit
17 from the effected watershed area and associated natural resources into which the
18 DEFENDANTS discharge, or by which DEFENDANTS' operations adversely affect members'
19 interests, in violation of the above-enumerated laws or statutes. The health, economic,
20 recreational, aesthetic and environmental interests of PLAINTIFF's members may be, have
21 been, are being, and will continue to be adversely affected by DEFENDANTS' unlawful
22 violations of the above-enumerated laws or statutes. PLAINTIFF contends that there exists an
23 injury in fact to its members, causation of that injury by the conduct of DEFENDANTS
24 complained of herein, and a likelihood that the requested relief will redress that injury.
25 PLAINTIFF, through its members has standing to bring this action. A copy of this Complaint
26 shall be provided to the United States Attorney General, the Administrator of the United States
27 EPA, and the Attorney General of California.

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III. INTRADISTRICT ASSIGNMENT

7. The basis for assignment of this case to the Northern District of California, pursuant to RCRA § 7002(a)&(b), 42 U.S.C. § 6972 (a)&(b), is that DEFENDANTS' Facilities and operations are located in this District. All of the sites of pollution are located in the Northern District of California as well.

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IV. PARTIES

8. PLAINTIFF, NORTHERN CALIFORNIA RIVER WATCH, is a 501(c)(3) non-profit public benefit corporation duly organized under the laws of the State of California. Its headquarters is located in Occidental, California. PLAINTIFF is dedicated to protecting, enhancing and helping to restore the waters of Northern California including its drinking water sources, ground water, rivers, creeks and tributaries. Many of PLAINTIFF's members live in areas affected by DEFENDANTS' pollution. Said members have an interest which is or may be adversely affected by DEFENDANTS' violations as set forth in this Complaint. Said members use the affected watershed for domestic water supply, agricultural water supply, recreation, sports, fishing, swimming, hiking, photography, nature walks and the like. Furthermore, the relief sought will redress the injury in fact and the likelihood of future injury and interference with the interests of PLAINTIFF'S members.

9. PLAINTIFF is informed and believes and on said information and belief alleges that DEFENDANT ATLANTIC RICHFIELD COMPANY is a corporation which is registered with the State of California, doing business in and having a registered office in Los Angeles, California.

10. DEFENDANTS DOES 1 - 10, inclusive, respectively, are persons, partnerships, corporations and entities, who are, or were, responsible for, or in some way contributed to, the violations which are the subject of this Complaint or are, or were, responsible for the maintenance, supervision, management, operations, or insurance coverage of the DEFENDANTS' Facilities. The names, identities, capacities, and functions of DEFENDANTS

1 DOES 1 - 10, inclusive, are presently unknown to PLAINTIFF. PLAINTIFF shall seek leave
2 of court to further amend this Complaint to insert the true names of said DEFENDANTS DOES
3 when the same have been ascertained.
4

5 V. STATEMENT OF FACTS

6 11. DEFENDANTS have owned, operated and/or leased the subject Facilities since at
7 least 1982.

8 12. DEFENDANTS have stored or currently store large quantities of petroleum products
9 in underground storage tanks (hereafter "USTs") at the Facilities. Beginning in the 1980s,
10 petroleum contamination was detected in soil and groundwater beneath the Facilities.
11 Subsequent investigation indicates that the contamination is attributable to leakage from USTs
12 and piping systems, surface spills and/or poor maintenance or operational practices.

13 13. Regulatory Agencies have ordered DEFENDANTS to investigate and remediate
14 petroleum contamination at the Facilities since the early 1980s. DEFENDANTS have
15 conducted some investigative and remedial work at the Facilities in response to the Agencies'
16 directives; however, significant levels of petroleum contamination remain in soil and
17 groundwater beneath and adjacent to the Facilities.
18

19 14. Regulatory Agencies have designated surface and ground waters as capable of
20 supporting domestic supply and established maximum contaminant levels for petroleum
21 constituents in surface and ground waters.

22 15. Benzene and toluene are known carcinogens and have been listed chemicals under
23 Proposition 65 since at least 1991. Surface and groundwater at the Facilities are potential
24 sources of drinking water under applicable Regional Water Quality Control Board "Water
25 Quality Control Plans" (Basin Plans). In the course of doing business DEFENDANTS have
26 discharged benzene and toluene to surface and groundwater at the Facilities on a daily basis
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1 since at least 1982. Under Proposition 65, a violator is subject to a maximum civil penalty of
2 \$2,500.00 per day per violation.

3 16. DEFENDANTS used and/or have stored petroleum at the Facilities in a manner
4 which has allowed significant quantities of hazardous petroleum constituents, including MTBE,
5 to be discharged to soil and groundwater beneath the Facilities and adjacent properties.
6

7 17. DEFENDANTS have conducted some site investigations and remedial work at the
8 Facilities. Based upon current levels of contamination, however, DEFENDANTS have been
9 unsuccessful in abating the contamination. To date, the levels of TPHg, benzene, toluene,
10 ethylbenzene, and xylenes remain high above the allowable Maximum Contaminant Levels
11 (hereafter, "MCLs") and/or Water Quality Objectives (hereafter, "WQOs") for said constituents,
12 creating an imminent and substantial endangerment to public health and the environment.
13 Significant quantities of MTBE have also been detected in soil and groundwater beneath the
14 Facilities and adjacent properties, creating an imminent and substantial endangerment to public
15 health and the environment.
16

17 18. The discharges by DEFENDANTS as alleged in the RCRA Notice and Proposition
18 65 Notice (Exhibits A and B) are both knowing and intentional. DEFENDANTS have and/or
19 presently use, store and sell petroleum products at the Facilities which are known to contain
20 benzene, toluene, TPHg, ethylbenzene, xylenes, and/or MTBE and intend or intended that such
21 products be sold to and used by the public. DEFENDANTS have known of the contamination
22 at the Facilities since at least the 1980s, and are also aware that failing to remediate the pollution
23 allows the contamination to migrate through soil and groundwater at and around the Facilities
24 and to continually contaminate and re-contaminate actual and potential sources of drinking
25 water.
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27 19. Violations of this and other statutes alleged in this Complaint are a major cause of
28 the continuing decline in water quality and a continuing threat to existing and future drinking

1 water supplies in Northern California. With every discharge, groundwater supplies are
2 contaminated. These discharges can and must be controlled in order for the groundwater supply
3 to be returned to a safe source of drinking water.
4

5 **VI. FIRST CLAIM FOR RELIEF**

6 **(Violation of 42 U.S.C. § 6901 et seq., specifically 42 U.S.C. § 6972(a)(1)(A) ["RCRA"])**

7 20. PLAINTIFF incorporates the allegations set forth above in paragraphs 1 through
8 19 and Exhibits A and B as though fully set forth herein. PLAINTIFF is informed and believes,
9 and based on such information and belief alleges:

10 21. RCRA § 7002(a)(1)(A), 42 U.S.C. § 6972(a)(1)(A), provides that any person may
11 commence a civil action against any person or governmental entity alleged to be in violation of
12 any permit, standard, regulation, condition, requirement, prohibition, or order which has become
13 effective pursuant to RCRA.

14 22. DEFENDANTS' USTs are regulated by appropriate Regional Water Quality Control
15 Boards and/or certain county departments of health.

16 23. Regional Water Quality Control Boards and/or county departments of health have
17 imposed remediation and monitoring requirements to ensure compliance with the RCRA UST
18 program.
19

20 24. PLAINTIFF is informed and believes, and thereon alleges that DEFENDANTS
21 have failed to comply with the statutory and regulatory leak prevention, leak detection,
22 monitoring, and remediation requirements imposed under RCRA and described in the RCRA
23 Notice attached as Exhibit A.

24 25. Continuing failure by DEFENDANTS to effectively remediate the on-going
25 contamination at its FACILITIES will irreparably harm PLAINTIFF and its members, for which
26 harm they have no plain, speedy or adequate remedy at law.
27
28

1 26. Wherefore, PLAINTIFF prays judgment against DEFENDANTS as set forth
2 hereafter.

3 **VII. SECOND CLAIM FOR RELIEF**

4 **(Violation of 42 U.S.C. § 6901 et seq., specifically 42 U.S.C. § 6972(a)(1)(B) ["RCRA"])**

5 27. PLAINTIFF incorporates the allegations set forth above in paragraphs 1 through 26
6 and Exhibits A and B as though fully set forth herein. PLAINTIFF is informed and believes,
7 and based on such information and belief alleges:

8 28. RCRA § 7002(a)(1)(B), 42 U.S.C. § 6972(a)(1)(B), provides that any person may
9 commence a civil action against any person or governmental entity including a past or present
10 generator, transporter, owner or operator of a treatment, storage or disposal facility who has
11 contributed to the past or present handling, storage, treatment, transportation, or disposal of any
12 solid or hazardous waste which may present an imminent and substantial endangerment to
13 health or the environment. The RCRA UST regulatory program is adopted and implemented
14 in California under the provisions governing the Underground Storage of Hazardous Substances
15 (California Health & Safety Code § 25280 et seq.).

16 29. DEFENDANTS own and operate the Facilities at which they store or have stored,
17 and transfer or have transferred, gasoline, diesel, fuel oil and mixed oils.

18 30. The Facilities either have USTs which are leaking or have leaked petroleum
19 chemicals including benzene, toluene, TPHg, ethylbenzene, xylenes, and MTBE into
20 groundwater; or petroleum products have been washed off the Facilities into nearby surface
21 waters.

22 31. Petroleum products are known to be hazardous to the environment and if released
23 into the environment in sufficient quantity pose an imminent and substantial risk.

1 32. Chemicals within these petroleum products such as benzene and toluene are known
2 carcinogens and/or reproductive toxins, and if released into the environment in sufficient
3 quantity pose an imminent and substantial risk to public health.

4 33. For purposes of RCRA, petroleum products and their constituents TPHg, benzene,
5 toluene, ethylbenzene, xylenes, and MTBE, are hazardous wastes within the meaning of the
6 statute.

7 34. PLAINTIFF is informed and believes, and thereon alleges that amounts of
8 petroleum products and their constituents TPHg, benzene, toluene, ethylbenzene, xylenes,
9 and/or MTBE released by DEFENDANTS at the Facilities are in sufficient quantity to pose an
10 imminent and substantial risk to both the environment and to human health.

11 35. Continuing acts or failure to act by DEFENDANTS to address these violations will
12 irreparably harm PLAINTIFF and its members, for which harm they have no plain, speedy or
13 adequate remedy at law.

14 36. Wherefore, PLAINTIFF prays judgment against DEFENDANTS as set forth
15 hereafter.

16 **VIII. THIRD CLAIM FOR RELIEF**

17 **(Violation of Health & Safety Code § 25249.5 et seq. [Proposition 65])**

18 37. PLAINTIFF incorporates the allegations in Paragraphs 1 through 36 above and
19 Exhibits A and B as though fully set forth herein. PLAINTIFF is informed and believes, and
20 based on such information and belief alleges:

21 38. At all times relevant herein, DEFENDANTS have owned and/or operated and are
22 responsible for the Facilities described as ARCO Gasoline Service Station located at 56 South
23 Weed Boulevard, Weed, California; ARCO Gasoline Service Station No. 601 located at 712
24 Lewelling Boulevard in San Leandro, California; ARCO Gasoline Station No. 771 located at
25 899 Rincon Avenue in Livermore, California; ARCO Gasoline Station No. 4931 located at 731
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1 West MacArthur Boulevard in Oakland, California; and ARCO Gasoline Station No. 6113
2 located at 785 East Stanley Boulevard in Livermore, California, such that gasoline and/or diesel
3 fuel and/or other petroleum constituents and/or petroleum products (hereafter, "Fuel") have
4 been spilled and have leaked (hereafter, "unauthorized releases") from sources at the Facilities
5 including, but not limited to, storage tanks and pipelines. These unauthorized releases have
6 passed into the soil of the Facilities and into the groundwater underlying the Facilities.
7

8 39. Proposition 65 imposes a discharge prohibition with respect to chemicals known
9 to the State of California to cause cancer or reproductive toxicity. Benzene and toluene were
10 listed under Proposition 65 more than 20 months prior to the filing of this Complaint (See 22
11 CCR § 12000).

12 40. DEFENDANTS employ ten or more persons.

13 41. Beginning at some time during or before the three years prior to the filing of this
14 Complaint and continuing each and every day thereafter, DEFENDANTS violated Proposition
15 65 in that DEFENDANTS, in the course of doing business and by committing the acts alleged
16 above, did knowingly discharge or release chemicals known to the State to cause cancer or
17 reproductive toxicity, including but not limited to benzene and toluene into water or onto land
18 or into land where such chemicals passed or probably will pass into any adjacent source of
19 drinking water.
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21 42. This unlawful conduct subjects DEFENDANTS to civil penalties of up to \$2,500.00
22 per day for each violation pursuant to Health and Safety Code § 25249.7(b) for which
23 DEFENDANTS are liable according to proof.

24 XII. RELIEF REQUESTED

25 PLAINTIFF, NORTHERN CALIFORNIA RIVER WATCH, respectfully requests this
26 Court grant the following relief:
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1 1. Declare DEFENDANTS to have violated and to be in violation of RCRA for
2 discharging petroleum products which are known carcinogens and reproductive toxins in
3 sufficient quantity to pose an imminent and substantial risk to health;

4 2. Enjoin DEFENDANTS from discharging pollutants from the Facilities, which
5 pollutants pose an imminent and substantial risk to health and the environment;

6 3. Order DEFENDANTS to comply with the substantive and procedural requirements
7 of RCRA;

8 4. Order DEFENDANTS to pay civil penalties, pursuant to RCRA, or pay for
9 remediation projects to redress harm caused by DEFENDANTS' violations of RCRA. Each of
10 the above-described violations of RCRA subjects the violator to a civil penalty of up to
11 \$27,500.00 per day per violation. Civil penalties may be assessed for violations occurring
12 within five (5) years prior to the initiation of a citizen enforcement action;

13 5. Enter such preliminary injunctions, permanent injunctions or other orders pursuant
14 to Health & Safety Code § 25249.7, § 25299.01 and § 25299.04, prohibiting DEFENDANTS
15 from discharging or releasing chemicals known to the State of California to cause cancer and/or
16 reproductive toxicity, into water or onto or into land, where such chemicals pass or probably
17 will pass into a source of drinking water, as PLAINTIFF shall specify in further application to
18 the court;

19 6. Enter restraining orders, preliminary injunctions, permanent injunctions, or other
20 orders requiring DEFENDANTS to comply with Health & Safety Code § 25280 et seq. and §
21 25299.10 et seq., and the rules and regulations pursuant to those sections;

22 7. Enter a judgment that DEFENDANTS are required to pay civil penalties and
23 exemplary damages according to proof.

24 8. Enter such preliminary injunctions, permanent injunctions or other orders pursuant
25 to California Code of Civil Procedure § 731, requiring DEFENDANTS to enjoin and abate the
26 to California Code of Civil Procedure § 731, requiring DEFENDANTS to enjoin and abate the
27 to California Code of Civil Procedure § 731, requiring DEFENDANTS to enjoin and abate the
28 to California Code of Civil Procedure § 731, requiring DEFENDANTS to enjoin and abate the

1 nuisance resulting from the discharge and release of Fuel and the migration of that Fuel into soil
2 and groundwater.

3
4 9. Enter a declaratory judgment pursuant to Code of Civil Procedure § 1060 declaring
5 that DEFENDANTS are unlawfully discharging prohibited chemicals into water or onto or into
6 land where the chemical passes or probably will pass into a source of drinking water in violation
7 of California Health & Safety Code § 25249.5;

8 10. Impose penalties against DEFENDANTS pursuant to California Health & Safety
9 Code § 25249.7(b);

10 11. Impose injunctive relief requiring DEFENDANTS to immediately investigate,
11 access and categorize the extent of pollution and means to remediate pollution at the Facilities;

12 12. Impose injunctive relief requiring DEFENDANTS to immediately remediate
13 pollution at the Facilities which have been adequately characterized or for which complete or
14 partial remediation may commence which will remediate some or all of the pollution.

15 13. Award costs (including reasonable attorney, expert, witness, and consultant fees)
16 to Plaintiff as authorized by RCRA and California Code of Civil Procedure § 1021.5;

17 14. Award such other relief as this Court may deem appropriate.
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21 DATED: April 27, 2004

Respectfully Submitted,

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24 JACK SILVER
25 Attorney for Plaintiff
26 NORTHERN CALIFORNIA RIVER WATCH
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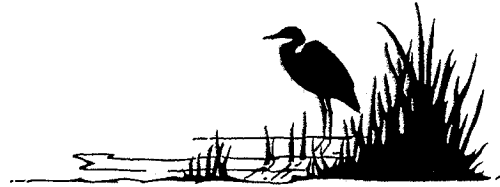
Exhibit A

Silver & Suver Law Offices

An association including a professional corporation

902 Stevenson Street Santa Rosa, California 95404

Phone 707-527-8811 Fax 707-527-5443



Paul S. Silver
Professional Corp.

Jack Silver

May 8, 2003

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

R.A. Malone, President/Owner
Atlantic Richfield Company
333 S. Hope Street
Los Angeles, Ca 90071

Re: **Notice of Violations and Intent to File Suit Under the
Resource Conservation and Recovery Act ("RCRA")**

Dear Mr. Malone:

On behalf of Northern California River Watch ("River Watch"), I am providing statutory notification to the Atlantic Richfield Company ("ARCO") of continuing and ongoing violations of the Federal Resource Conservation and Recovery Act ("RCRA", 42 U.S.C. §§ 6901, et seq.) in conjunction with its continuing operations at several of its Northern California gasoline service station sites.

River Watch hereby notifies ARCO that at the expiration of the appropriate notice periods under RCRA, River Watch intends to commence a civil action against ARCO on the following grounds:

- 1) ARCO's use and storage of petroleum products at its facilities as identified in this **Notice** has and continues to violate permits, standards regulations, conditions, requirements and/or prohibitions effective pursuant to RCRA regarding storage of petroleum in underground storage tanks [42 U.S.C. § 6972(a)(1)(A)];

- 2) ARCO's operations at its facilities as identified in this Notice have caused petroleum contamination of soil and groundwater which presents an imminent and substantial endangerment to human health and the environment [42 U.S.C. § 6972(a)(1)(B)].

1. ARCO Station # 389
56 South Weed Boulevard, Weed, California

In August of 1988, ARCO owned or operated a gasoline service station located at 56 South Weed Boulevard in Weed, California (Facility No. 389). On or about August 12, 1988, a petroleum hydrocarbon release from one or more underground storage tanks was discovered by ARCO during underground storage tank and associated piping removal or repair operations.

Under the general oversight of the California Regional Water Quality Control Board ("RWQCB"), ARCO's consulting engineering firm, Applied GeoSystems, Inc., was directed to commence monitoring operations and to develop a work plan to characterize the nature and extent of the underground contamination as a necessary prelude to effecting the remediation of the contaminants at this site. The RWQCB required ARCO to conduct quarterly groundwater sampling, to be followed by quarterly analytical reports.

Initial groundwater testing at monitoring wells on the site produced analytical data which revealed extensive contamination from petroleum products released from this facility. TPHg was found in quantities up to 170,000 ppb; benzene up to 6,000 ppb; toluene up to 27,000 ppb; ethylbenzene up to 3,700 ppb; and xylenes up to 20,000 ppb (MTBE was not tested at that time). Following a preliminary site assessment and linear delineation of the site in November of 1990, a remedial action plan was finally developed by August of 1995, and a soil vapor extraction system was installed and activated. The remediation system was designed in part to ameliorate the impacted aquifer beneath the facility.

By March of 2000, contaminant levels continued to be consistent with an ongoing level of high concentrations of petroleum hydrocarbons in the groundwater and soil at the site. Levels of TPHg were as high as 55,200 ppb; TPHd as high as 6,430 ppb; benzene as high as 810 ppb; toluene as high as 12,000 ppb; ethylbenzene as high as 2,170 ppb; xylenes as high as 12,900 ppb; and MTBE as high as 1,250 ppb.

Monitoring of the contaminant levels continues at this site on a quarterly basis. Thus far approximately 1866 pounds of TPHg have been removed from the site, but no bulk soil has been removed. ARCO continues to rely upon soil vapor extraction and air sparging as its primary remediation method; and, as a direct result, contaminant levels have remained high: in November of 2002 TPHg was up to 37,000 ppb; TPHd up to 8,500 ppb; benzene up to 490 ppb; toluene up to 5,900 ppb; ethylbenzene up to 1,400 ppb; and MTBE up to 1,200 ppb.

At the present time, over 14 years following the initial release of contaminants at this site, remediation of the site has been only partially completed. Engineering estimates of how much longer this remediation is expected to take for this site have not been found within RWQCB files. An adequate sensitive receptor survey remains to be completed. No remedial action plan has been developed by ARCO which is expected to accomplish the remediation of this site within a reasonable time. At the present slow rate of remediation relying upon air sparging and vapor extraction only, River Watch anticipates that such remediation will require many more years to accomplish.

2. ARCO Station # 601

712 Lewelling Boulevard, San Leandro, California

In August of 1989, ARCO owned and/or operated a gasoline station located at 712 Lewelling Boulevard in San Leandro, California (Facility No. 601). On or about August 2, 1989, a petroleum hydrocarbon release was discovered during pre-drilling operations prior to tank removal and replacement at this site. TPHg in soil samples taken from the site at that time confirmed concentrations as high as 12,000 ppm.

Under the general oversight of the RWQCB and the Alameda County Health Care Services Agency ("ACHCSA"), Applied GeoSystems, Inc. was directed to commence monitoring operations and to develop a work plan to characterize the nature and extent of the underground contamination as a necessary prelude to effecting the remediation of the contaminants at this site. The RWQCB required ARCO to conduct quarterly groundwater sampling, to be followed by quarterly analytical reports.

In January, 1990, ARCO removed four gasoline storage tanks and one waste-oil storage tank from the site, eventually replacing them with five upgraded underground storage tanks. Monitoring wells were installed by Applied

GeoSystems, Inc. to enable the delineation of the lateral and vertical extent of the hydrocarbon contamination in the soil and groundwater at and adjacent to the site. By the latter part of 1991, it was determined that the soil composition and high water table in the vicinity of the site eliminated vapor extraction as a method of remediation of the contamination.

Following delays in plume delineation due to refusal of access by an adjacent property owner, EMCON, Inc. assumed groundwater monitoring and samples analysis for ARCO at this site. In March of 1995, concentrations of hydrocarbon contaminants were found from soil and groundwater samples to remain significantly above targeted maximum contaminant levels for California: TPHg was found as high as 370,000 ppb; benzene as high as 9,300 ppb; toluene as high as 12,000 ppb; ethylbenzene as high as 5,800 ppb; xylenes as high as 34,000 ppb; and MTBE at <3000 (as of its first testing in February of 1996).

By September of 1999, plume monitoring, delineation and remediation was further delayed by the prospect of hydrocarbon migration through municipal utility trenches, and by the difficulties and/or risks of installing monitoring wells in such trenches. In March of 2002, ACHCSA noted in a letter to ARCO that the site monitoring first requested by ACHCSA five years earlier still had not been accomplished. At that time ACHCSA gave ARCO 45 days to complete the monitoring work pursuant to EMCON's 1997 work plan.

By the date of the soil and groundwater sampling of July 23, 2002 (apparently the last available analytical records provided by ARCO to ACHCSA), the TPHg levels at this site were still as high as 45,000 ppm; benzene as high as 3,200 ppm; toluene as high as 570 ppm; ethylbenzene as high as 2,100 ppm; xylenes as high as 10,000 ppm; and MTBE at <250. TPHg and benzene were detected in four of the nine site wells, and high levels of MTBE were detected in three of them. As of the third quarter of 2002, 1,565 cubic yards of TPH-impacted soil had been removed from the site, but significant levels of contaminants remain.

At the present time, over 13 years after the initial contaminant release, ARCO has not definitively delineated the contaminant plume it has caused, and has not produced a remedial action plan which will effect the remediation of this site within a reasonable period of time. An adequate sensitive receptor survey remains to be completed. With the present "natural attenuation" method of remediation currently in use at the site, this underground soil and groundwater pollution, which

has already persisted for over a decade, may take as long as another decade to be removed.

3. ARCO Station # 771
899 Rincon Avenue, Livermore, California

In August of 1987, ARCO owned or operated a gasoline service station located at 899 Rincon Avenue, in Livermore, California (Facility No. 771). On or about August 25, 1987, a petroleum hydrocarbon release from one or more underground storage tanks was discovered by ARCO during underground storage tank and associated piping removal operations. Initial soil analysis of the soil beneath one of the tanks revealed the presence of the following concentrations of petroleum products and constituents: TPHg as high as 378,000 ppb.

Under the general oversight of the RWQCB, ARCO's consulting engineering firm, Applied Geosystems, Inc., was directed to commence monitoring operations and to develop a work plan to characterize the nature and extent of the underground contamination as a necessary prelude to effecting the remediation of the contaminants at this site. The RWQCB required ARCO to conduct quarterly groundwater sampling, to be followed by quarterly analytical reports.

By the Spring of 1991, floating product was found in one of the site's monitoring wells. Concentrations of TPHg ranged from 530 ppb in MW-3 to 98,000 ppb in MW-1. Concentrations of BTEX ranged from 4 ppb ethylbenzene in MW-3 to 20,000 ppb xylenes in MW-1. Benzene far exceeded the California maximum contaminant levels in both wells. The underground plume of contaminants affecting existing groundwater supplies had not been delineated at that time as to its vertical or lateral extent, but was reportedly accomplished by October of that year. The underground storage tank system at this site suffered another leak in December of 1991 which was stopped shortly thereafter.

Analytical groundwater sampling for the first quarter of 2002 revealed that contaminant concentration levels had remained above California maximum contaminant level standards. At that time maximum TPHg and benzene concentrations were detected in well MW-7 at 4,200 ppb and 350 ppb respectively, and the MTBE concentrations in MW-4 was detected at 300 ppb. By this time 1,700 cubic yards of TPH-impacted soil had been removed and the frequency of monitoring had been reduced to semi-annually. The consulting engineering firm hired by ARCO to do remediation on the site, Cambria Environmental Technology,

Inc., was relying only upon "natural attenuation" to achieve the eventual remediation of this site – apparently due to cost considerations.

By the third quarter of 2002, the contaminant concentrations at the site had not been appreciably reduced by Cambria's natural attenuation methods. TPHg was detected in five of the eight wells sampled at concentrations ranging from 60 ppb to 5,700 ppb. Benzene was detected in five wells at concentrations ranging from 2 ppb to 630 ppb. MTBE was detected in five wells at concentrations ranging from 13 ppb to 180 ppb, and TBA was detected in three of the wells in concentrations ranging from 280 ppb to 820 ppb.

At the present time, over 15 years after the initial discovery of the petroleum release at this site, soil and ground water at the site remains contaminated and there is no end in sight due to the inadequate remediation efforts of ARCO's consulting engineers. The contaminant plume is not fully characterized, and ARCO's remedial action plan is not designed to cleanup this site within a reasonable period of time using the best technology available to it. At the present rate of remediation, the remediation of the site will require many more years.

4. ARCO Station # 4931
731 W. MacArthur Boulevard, Oakland, California.

In November of 1982, ARCO owned or operated a gasoline service station located at 731 West MacArthur Boulevard in Oakland, California (Facility No. 4931). On or about November 23, 1982, a hydrocarbon leak at this site was reported to the RWQCB. Soil and groundwater samples collected from this site indicated petroleum hydrocarbon contamination beneath the site in excess of the maximum contaminant levels statutorily mandated in the State of California.

Under the general oversight of the RWQCB, ARCO's consulting engineering firm was directed to commence monitoring operations and to develop a work plan to characterize the nature and extent of the underground contamination as a necessary prelude to effecting the remediation of the contaminants at this site. The RWQCB required ARCO to conduct quarterly groundwater sampling, to be followed by quarterly analytical reports.

Between 1982 and 1987, eleven monitoring wells had been installed in and around the site, and groundwater sampling finally began in 1989. Following the delineation of the extent of pollution at the site, a remedial action plan for the site

was issued by ARCO's consulting engineers, GeoStrategies, Inc., in May of 1991. Thereafter, periodic sampling continued as site remediation efforts were gradually tested and commenced in early 1996 – 14 years after the initial hydrocarbon release. By November of 1997, MTBE levels at the site were still as high as 27,000 ppb.

Analytical testing of soil and groundwater samples continued quarterly over the next several years. In June of 2000 sample analyses reflected contaminant levels for TPHg as high as 810 ppb; xylenes as high as 810 ppb; MTBE as high as 1,500 ppb; and no appreciable levels of benzene, ethylbenzene and toluene. By August of 2002, however, TPHg levels were found to be as high as 9,400 ppb; benzene as high as 1,800 ppb; toluene as high as <20; ethylbenzene as high as 35 ppb; total xylenes as high as 28 ppb; and MTBE as high as 4,200 ppb. It was apparent at that time that either the remediation methods relied upon by ARCO's engineers (now the URS Corporation) were ineffective to remediate the site, or there had been another hydrocarbon release which was contributing to the contamination already present in the soil and groundwater under the site.

At the present time, over 20 years following the initial discovery of contaminants in the soil and groundwater at this site, much work remains to be done to accomplish its remediation. The contaminant plume requires further characterization, and a remedial action plan needs to be produced which is designed to remediate this site within a reasonable time in order to prevent further groundwater and possible surface water contamination. River Watch believes that unless ARCO becomes willing to utilize the best available technology to achieve site remediation as early as possible, the cleanup of this site will require another 10 to 12 years.

5. ARCO Station # 6113

785 E. Stanley Boulevard, Livermore, California

In 1989, ARCO owned or operated a gasoline service station located at 785 East Stanley Boulevard, Livermore, California (Facility No. 6113). On or about January 26, 1989, soil samples collected from this site during tank removal indicated extensive petroleum hydrocarbon contamination beneath the site in excess of the maximum contaminant levels statutorily mandated in the State of California.

Under the general oversight of the RWQCB, ARCO's consulting engineering firm was directed to commence monitoring operations and to develop a

work plan to characterize the nature and extent of the underground contamination as a necessary prelude to effecting the remediation of the contaminants at this site. The RWQCB required ARCO to conduct quarterly groundwater sampling, to be followed by quarterly analytical reports.

A preliminary site assessment was obtained through the efforts of ARCO's consulting engineering firm in September of 1989, and the pollution under and around the site was characterized by February of 1991.

Analytical testing in May of 1997 reflected contaminant levels for TPHg as high as 7,600 ppb; benzene as high as 480 ppb; toluene as high as 140 ppb; ethylbenzene as high as 400 ppb; xylenes as high as 1,200 ppb; and MTBE at < 40 ppb. However, subsequent monitoring well testing at the site revealed new hydrocarbon release patterns and TPHg levels in November of 2000 as high as 26,000 ppb; benzene as high as 491 ppb; toluene as high as 149 ppb; ethylbenzene as high as 1,090 ppb; xylenes as high as 3,810 ppb; and MTBE as high as 671 ppb.

Apparently due to soil excavation in April of 2000, several other wells on this site were abandoned and dropped from the testing process in the year 2000 even though their contaminant levels were the highest of all the monitoring locations which had been constructed. These two wells reflected TPHg levels of 54,200 ppb and 36,100 ppb, and MTBE of 15,100 ppb and 8,460, respectively, but have not been tested since that time and not replaced by new well installations.

As of the most recent testing for which RWQCB file records are available (April of 2002), ARCO's consulting engineers' analytical testing of the monitoring wells noted contaminant levels of TPHg of up to 17,000 ppb; benzene of up to 98 ppb; toluene of up to 100 ppb; ethylbenzene of up to 1,700 ppb; xylenes of up to 3,400 ppb; and MTBE of up to 1,600 ppb. While several of the existing monitoring wells are still tested at quarterly intervals, the remediation method at this ARCO site is being attempted by nothing more than "natural attenuation." Using this method the remediation of this site could take another decade while groundwater resources continue to be infiltrated with hydrocarbon contaminants, and while drinking water supplies continue to be threatened with the influx of carcinogenic materials.

River Watch believes that with respect to this site, ARCO is not employing the best available technology to deal with the problems the petroleum releases have created. Sensitive receptor surveys need to be adequately completed, and a

remedial action plan must be designed to remediate this site within a reasonable period of time.

Regulatory Standards

Water Quality Objectives exist to ensure protection of the beneficial uses of water. Several beneficial uses of water exist, and the most stringent water quality objectives for protection of all beneficial uses are selected as the protective water quality criteria. Alternative cleanup and abatement actions need to be considered which evaluate the feasibility of, at a minimum: (1) cleanup to background levels, (2) cleanup to levels attainable through application of best practicable technology, and (3) cleanup to protective water quality criteria levels.

Existing and potential beneficial uses of area groundwater include domestic, agricultural, industrial and municipal water supply. The water quality control plan for the north coast region, the "Basin Plan", identifies all ground water as a source of drinking water.

ARCO's Violations

Between May 5, 1998 and May 5, 2003, at the sites described above, ARCO has caused or permitted, causes or permits, or threatens to cause or permit, waste to be discharged or deposited where it is, or probably will be, discharged into waters of the State and creates, or threatens to create, a condition of pollution or nuisance. The discharge and threatened discharge of waste is deleterious to the beneficial uses of water, and is creating and threatens to create a condition of pollution and nuisance which threatens to continue unless the discharge and threatened discharge is permanently abated.

ARCO's Violations of Permits, Standards and Regulations [42 U.S.C. § 6972(a)(1)(A)]

Provisions of RCRA govern the use and operation of underground storage tanks used for storage of petroleum products (subchapter IX, 42 U.S.C. § 6991 et seq.). The RCRA Underground Storage Tank regulatory program is adopted and implemented in California under the State Underground Storage of Hazardous Substance Account Act (California Health & Safety Code § 25280 et seq.).

Between May 5, 1998 and May 5, 2003, ARCO's use and storage of petroleum at each of these five sites has allowed significant quantities of hazardous petroleum constituents to be released or discharged into soil and groundwater in violation of provisions of the RCRA and California underground storage tank regulatory programs including, but not limited to, provisions governing general operating requirements for underground storage tanks, release detection and prevention requirements, release reporting and investigation requirements, and release response and corrective action requirements.

Specifically, ARCO is responsible for the following statutory violations under section 6972 (a)(1)(A) of RCRA:

1. Failure to prevent a release, in violation of 40 CFR §§ 280.30, 280.31 and California Health & Safety Code §§ 25292.1(a) - (c), 25292.3(a) and (b). (This section specifically applies to ARCO's operation of stations #389, #601, #771, #4931, and #6113.)
2. Failure to properly detect and monitor release, in violation of 40 CFR §§ 280.40 - 280.44 and California Health & Safety Code §25292. (This section specifically applies to ARCO's operation of stations #389, #601, #771, #4931, and #6113.)
3. Failure to properly report and keep records of the release, in violation of 40 CFR §§ 280.34, 280.50, 280.52, 280.53, 280.63(b) and California Health & Safety Code §§ 25289, 25293 and 25295(a)(1). (This section particularly applies to ARCO's monitoring operations at stations #601, #771 and #6113.)
4. Failure to take proper corrective action, in violation of 40 CFR §§ 280.53, 280.60 - 280.66 and California Health & Safety Code § 25295(a)(1). (This section specifically applies to ARCO's remediation operations at stations #389, #601, #771, #4931, and #6113.)

Imminent and Substantial Endangerment
[42 U.S.C. § 6972(a)(1)(B)]

The RWQCB has adopted a Water Quality Control Plan ("Basin Plan") which designates all surface and groundwater within the North Coast region as capable of supporting domestic water supplies. The RWQCB has adopted

Maximum Contaminant Levels ("MCLs") and/or Water Quality Objectives ("WQOs") for petroleum constituents in surface and groundwater within the region of 50 ppb for TPHg, 1 ppb for benzene, 42 ppb for toluene and 5 ppb for MTBE.

Between May 5, 1998 and May 5, 2003, ARCO used and stored, and continues to use and store, petroleum products at each of its above referenced sites in a manner which has allowed significant quantities of hazardous petroleum constituents to be discharged to soil and groundwater beneath each of its facilities and beneath adjacent properties.

At each of these sites (specifically: #389, #601, #771, #4931 and #6113), the contaminant levels of TPHg, benzene, toluene, and MTBE in groundwater are significantly greater than the allowable MCL and/or WQO for said constituents. Benzene, MTBE, TAME, and TBA are known carcinogens. Toluene is a reproductive toxin. Ethylbenzene, methanol and xylene are live toxins. All are known to harm both plants and animals. These pollutants are creating an imminent and substantial endangerment to public health and the environment, and should be removed from each of these five sites at the earliest possible time by using the best available technology.

The violations alleged in this **Notice** are knowing and intentional in that ARCO uses, stores and sells petroleum products at each of its above-referenced sites which are known to contain hazardous substances; and, ARCO intends that such products will be sold to and used by the public. ARCO has known of the contamination at each of these facilities since at least the early 1990's, and has also known that failing to promptly remediate the pollution allows the contamination to migrate through soil and groundwater at and adjacent to the facilities, and allows it to continually contaminate and re-contaminate actual and potential sources of drinking water.

Violations of RCRA of the type alleged herein are a major cause of the continuing decline in water quality and pose a continuing threat to existing and future drinking water supplies of Northern California. With every discharge, groundwater supplies are contaminated. These discharges can and must be controlled in order for the groundwater supply to be returned to a safe source of drinking water.

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In addition to the violations set forth above, this **Notice** is intended to cover all violations of RCRA as evidenced by information which becomes available to River Watch after the date of this **Notice**.

River Watch is a non-profit corporation dedicated to the protection and enhancement of the waters of the State of California including all rivers, creeks, streams and groundwater in Northern California. River Watch is organized under the laws of the State of California. Its address is 74 Main Street, Suite D., P.O. Box 1360, Occidental, CA, 95465; its telephone number is (707) 874-2579.

The violations of ARCO as set forth in this **Notice** affect the health and enjoyment of members of River Watch who reside and recreate in the affected watershed areas. The members of River Watch use the watershed for domestic water supply, agricultural water supply, recreation, sports, fishing, swimming, shellfish harvesting, hiking, photography, nature walks and the like. Their health, use and enjoyment of this natural resource is specifically impaired by these violations of RCRA.

River Watch has retained legal counsel to represent them in this matter. All communications should be addressed to:

Northern California Environmental Defense Center
c/o Jack Silver, Esquire
Silver & Silver Law Office
902 Stevenson Street
Santa Rosa, CA 95404
Tel. (707) 527-8811
Fax (707) 527-5443

RCRA requires that sixty (60) days prior to the initiation of an action for violation of a permit, standard, regulation, condition, requirement, prohibition or order effective under RCRA, a private party must give notice of the violation to the alleged violator, the Administrator of the U.S. Environmental Protection Agency and the State in which the violation is alleged to have occurred (42 U.S.C. § 6972(b)(1)(A)).

RCRA also requires that a private party provide ninety (90) days prior notice to the alleged violator, the Administrator of the Environmental Protection Agency and the State in which the violation is alleged to have occurred before initiating an

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action for an imminent and substantial endangerment to human health or the environment (42 U.S.C. § 6972(b)(2)(A)).

River Watch believes this **Notice** sufficiently states the grounds for filing suit under the statutory and regulatory provisions of RCRA as to each of the five sites referenced above. At the close of the notice periods or shortly thereafter, River Watch intends to file a suit against ARCO under RCRA for each of the violations as alleged herein, with respect to the existing conditions at each of the five gasoline service station sites referenced above.

During the notice period, however, River Watch is willing to discuss effective remedies for the violations noted in this **Notice**. If ARCO wishes to pursue such discussions in the absence of litigation, it is suggested that ARCO initiate the discussions immediately so that they may be completed before the end of the notice period. River Watch does not intend to delay the filing of a lawsuit if discussions are continuing when the notice period ends.

Very truly yours,


Jack Silver, Esq.

cc:

Christie Todd Whitman, Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Mail Code 3213A
Washington, D.C. 20460

Wayne Nastri, Regional Administrator
U.S. Environmental Protection Agency Region 9
75 Hawthorne St.
San Francisco, CA 94105

Celeste Cantü, Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, California 95812-0100

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Mark Leary, Executive Director
Calif. Integrated Waste Mgmt. Board
1001 "I" Street
Sacramento, CA 95814

Atlantic Richfield Company
c/o C T Corporation System
Registered Agent for Service
818 West Seventh Street
Los Angeles, CA 90017

Atlantic Richfield Company
200 E. Randolph Drive
Chicago, IL 60601

Exhibit B

Silver & Silver Law Offices

An association including a professional corporation

902 Stevenson Street Santa Rosa, California 95404

Phone 707-527-8811 Fax 707-527-5443



Paul S. Silver
Professional Corp.

Jack Silver

May 8, 2003

R.A. Malone, President/Owner
Atlantic Richfield Company
333 S. Hope Street
Los Angeles, Ca 90071

Re: Notice of Violations and Intent to File Suit under the Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65")

Dear Mr. Malone:

On behalf of Northern California River Watch ("River Watch"), I am providing statutory notification to the Atlantic Richfield Company ("ARCO") of continuing and ongoing violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65") in conjunction with the hydrocarbon releases at each of the sites listed below.

River Watch hereby notifies ARCO that at the after the expiration of sixty (60) days from the date of this **Notice**, River Watch intends to commence a civil action against ARCO on the following grounds:

ARCO's releases of petroleum contaminants at the sites listed herein has caused the discharge or release of cancer causing chemicals and/or reproductive toxins into water or onto or into land where such chemicals pass or probably will pass into a source of drinking water. (Calif. Health & Safety Code, §§ 25249.5- 25249.13; *People ex rel. Lungren v. Superior Court* (1996) 14 Cal. 4th 294, 298, 926 P.2d 1042.)

1. ARCO Station # 601
712 Lewelling Boulevard, San Leandro, California

In August of 1989, ARCO owned and/or operated a gasoline station located at 712 Lewelling Boulevard in San Leandro, California (Facility No. 601). On or about August 2, 1989, a petroleum hydrocarbon release was discovered during pre-drilling operations prior to tank removal and replacement at this site. TPHg in soil samples taken from the site at that time confirmed concentrations as high as 12,000 ppm.

Under the general oversight of the Regional Water Quality Control Board ("RWQCB") and the Alameda County Health Care Services Agency ("ACHCSA"), Applied GeoSystems, Inc. was directed to commence monitoring operations and to develop a work plan to characterize the nature and extent of the underground contamination as a necessary prelude to effecting the remediation of the contaminants at this site. The RWQCB required ARCO to conduct quarterly groundwater sampling, to be followed by quarterly analytical reports.

In January, 1990, ARCO removed four gasoline storage tanks and one waste-oil storage tank from the site, eventually replacing them with five upgraded underground storage tanks. Monitoring wells were installed by Applied GeoSystems, Inc. to enable the delineation of the lateral and vertical extent of the hydrocarbon contamination in the soil and groundwater at and adjacent to the site. By the latter part of 1991, it was determined that the soil composition and high water table in the vicinity of the site eliminated vapor extraction as a method of remediation of the contamination.

Following delays in plume delineation due to refusal of access by an adjacent property owner, EMCON, Inc. assumed groundwater monitoring and samples analysis for ARCO at this site. In March of 1995, concentrations of hydrocarbon contaminants were found from soil and groundwater samples to remain significantly above targeted maximum contaminant levels for California: TPHg was found as high as 370,000 ppb; benzene as high as 9,300 ppb; toluene as high as 12,000 ppb; ethylbenzene as high as 5,800 ppb; xylenes as high as 34,000 ppb; and MTBE at <3000 (as of its first testing in February of 1996).

By September of 1999, plume monitoring, delineation and remediation was further delayed by the prospect of hydrocarbon migration through municipal utility

trenches, and by the difficulties and/or risks of installing monitoring wells in such trenches. In March of 2002, ACHCSA noted in a letter to ARCO that the site monitoring first requested by ACHCSA five years earlier still had not been accomplished. At that time ACHCSA gave ARCO 45 days to complete the monitoring work pursuant to EMCON's 1997 work plan.

By the date of the soil and groundwater sampling of July 23, 2002 (apparently the last available analytical records provided by ARCO to ACHCSA), the TPHg levels at this site were still as high as 45,000 ppm; benzene as high as 3,200 ppm; toluene as high as 570 ppm; ethylbenzene as high as 2,100 ppm; xylenes as high as 10,000 ppm; and MTBE at <250. TPHg and benzene were detected in four of the nine site wells, and high levels of MTBE were detected in three of them. As of the third quarter of 2002, 1,565 cubic yards of TPH-impacted soil had been removed from the site, but significant levels of contaminants remain.

At the present time, over 13 years after the initial contaminant release, ARCO has not definitively delineated the contaminant plume it has caused, and has not produced a remedial action plan which will effect the remediation of this site within a reasonable period of time. An adequate sensitive receptor survey remains to be completed. With the present "natural attenuation" method of remediation currently in use at the site, this underground soil and groundwater pollution, which has already persisted for over a decade, may take as long as another decade to be removed.

2. ARCO Station # 771

899 Rincon Avenue, Livermore, California

In August of 1987, ARCO owned or operated a gasoline service station located at 899 Rincon Avenue, Livermore, California (Facility No. 771). On or about August 25, 1987, a petroleum hydrocarbon release from one or more underground storage tanks was discovered by ARCO during underground storage tank and associated piping removal operations. Initial soil analysis of the soil beneath one of the tanks revealed the presence of the following concentrations of petroleum products and constituents: TPHg as high as 378,000 ppb.

Under the general oversight of the RWQCB, ARCO's consulting engineering firm, Applied Geosystems, Inc., was directed to commence monitoring operations and to develop a work plan to characterize the nature and extent of the underground contamination as a necessary prelude to effecting the remediation of

the contaminants at this site. The RWQCB required ARCO to conduct quarterly groundwater sampling, to be followed by quarterly analytical reports.

By the Spring of 1991, floating product was found in one of the site's monitoring wells. Concentrations of TPHg ranged from 530 ppb in MW-3 to 98,000 ppb in MW-1. Concentrations of BTEX ranged from 4 ppb ethylbenzene in MW-3 to 20,000 ppb xylenes in MW-1. Benzene far exceeded the California maximum contaminant levels in both wells. The underground plume of contaminants affecting existing groundwater supplies had not been delineated at that time as to its vertical or lateral extent, but was reportedly accomplished by October of that year. The underground storage tank system at this site suffered another leak in December of 1991 which was stopped shortly thereafter.

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At the present time, over 15 years after the initial discovery of the petroleum release at this site, soil and groundwater at the site remains contaminated and there is no end in sight due to the inadequate remediation efforts of ARCO's consulting engineers. The contaminant plume is not fully characterized, and ARCO's remedial action plan is not designed to cleanup this site within a reasonable period of time using the best technology available to it. At the present rate of remediation, the remediation of the site will require many more years.

**3. ARCO Station # 4931
731 W. MacArthur Boulevard, Oakland, California.**

In November of 1982, ARCO owned or operated a gasoline service station located at 731 West MacArthur Boulevard, Oakland, California (Facility No. 4931). On or about November 23, 1982, a hydrocarbon leak at this site was reported to the RWQCB. Soil and groundwater samples collected from this site indicated petroleum hydrocarbon contamination beneath the site in excess of the maximum contaminant levels statutorily mandated in the State of California.

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At the present time, over 20 years following the initial discovery of contaminants in the soil and groundwater at this site, much work remains to be done to accomplish its remediation. The contaminant plume requires further characterization, and a remedial action plan needs to be produced which is designed to remediate this site within a reasonable time in order to prevent further groundwater and possible surface water contamination. River Watch believes that unless ARCO becomes willing to utilize the best available technology to achieve site remediation as early as possible, the cleanup of this site will require another 10 to 12 years.

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Apparently due to soil excavation in April of 2000, several other wells on this site were abandoned and dropped from the testing process in the year 2000 even though their contaminant levels were the highest of all the monitoring locations which had been constructed. These two wells reflected TPHg levels of 54,200 ppb and 36,100 ppb, and MTBE of 15,100 ppb and 8,460, respectively, but have not been tested since that time and not replaced by new well installations.

As of the most recent testing for which RWQCB file records are available (April of 2002), ARCO's consulting engineers' analytical testing of the monitoring wells noted contaminant levels of TPHg of up to 17,000 ppb; benzene of up to 98 ppb; toluene of up to 100 ppb; ethylbenzene of up to 1,700 ppb; xylenes of up to 3,400 ppb; and MTBE of up to 1,600 ppb. While several of the existing monitoring wells are still tested at quarterly intervals, the remediation method at this ARCO site is being attempted by nothing more than "natural attenuation." Using this method the remediation of this site could take another decade while groundwater resources continue to be infiltrated with hydrocarbon contaminants, and while drinking water supplies continue to be threatened with the influx of carcinogenic materials.

River Watch believes that with respect to this location, ARCO is not employing the best available technology to deal with the problems their petroleum releases have created. Sensitive receptor surveys need to be adequately completed, and a remedial action plan must be designed to remediate this site within a reasonable period of time.

Regulatory Standards

Water Quality Objectives exist to ensure protection of the beneficial uses of water. Several beneficial uses of water exist, and the most stringent water quality objectives for protection of all beneficial uses are selected as the protective water quality criteria. Alternative cleanup and abatement actions need to be considered which evaluate the feasibility of, at a minimum: (1) cleanup to background levels, (2) cleanup to levels attainable through application of best practicable technology, and (3) cleanup to protective water quality criteria levels.

Existing and potential beneficial uses of area groundwater include domestic, agricultural, industrial and municipal water supply. The water quality control plan for the north coast region, the "Basin Plan", identifies all ground water as a source of drinking water.

The RWQCB has adopted a Water Quality Control Plan which designates all surface and groundwater within the North Coast region as capable of supporting domestic, agricultural and industrial supply. The RWQCB has adopted Maximum Contaminant Levels ("MCLs") and/or Water Quality Objectives ("WQOs") for petroleum constituents in surface and groundwater within the region of 50 ppb for TPHg, 1 ppb for benzene and 42 ppb for toluene.

ARCO's Proposition 65 Violations

ARCO uses and stores petroleum at each of these four sites in a manner which has allowed significant quantities of hazardous petroleum constituents to be discharged to soil and groundwater beneath the Site and adjacent properties. Between May 5, 1998 and May 5, 2003, at ARCO stations #601, #771, #4931 and #6113, as described above, ARCO has contaminated ground and drinking water sources in and around each of its four sites with benzene and toluene. Benzene (CAS Registry No. 71432, listed 02/27/87) is a known carcinogen. Toluene (CAS Registry No. 108883, listed 01/01/91) is known to cause reproductive toxicity. Surface and groundwater at the sites are potential sources of drinking water under the RWQCB Water Quality Control Plan. In the course of doing business ARCO has discharged benzene and toluene to surface and groundwater at these four sites on a daily basis since at least 1998. Under Proposition 65, a violator is subject to a maximum civil penalty of \$2,500.00 per day per violation.

The discharges by ARCO as alleged in this Notice are both knowing and intentional. ARCO uses, stores and sells petroleum products at these four sites which are known to contain benzene and toluene, and intends that such products will be sold to and used by the public. ARCO has known of the contamination at these sites since at least 1998, and is also aware that failing to remediate the pollution allows the contamination to migrate through soil and groundwater at each of these four sites and continually contaminate and re-contaminate actual and potential sources of drinking water.

Violations of Proposition 65 of the type alleged herein are a major cause of the continuing decline in water quality and a continuing threat to existing and future drinking water supplies in Northern California. With every discharge, groundwater supplies are contaminated. These discharges can and must be controlled in order for the groundwater supply to be returned to a safe source of drinking water.

Evidence obtained by River Watch from various sources, including RWQCB files, indicates that the release of these and other petroleum constituents and chemical contaminants will cause significant amounts of these substances to enter ground and/or surface waters, and jeopardize drinking sources in each of the communities where these ARCO facilities and sites now exist. In addition, River Watch believes that none of these releases are in conformity with any applicable laws, regulations, permits or other federal, state or local requirements.

Under Proposition 65 provisions, any person may bring a civil suit against violators of this Act, providing certain notice and reporting requirements are met. Further, pursuant to Proposition 65 penalty provisions, each day of violations subjects the violator to a maximum civil penalty of \$2,500.00 per violation.

By statute this **Notice** is given to ARCO, the State Attorney General, the local District Attorney, and any City Attorney for cities with populations exceeding 750,000, in whose jurisdictions the violations are alleged to have occurred. River Watch believes that this **Notice** specifically satisfies statutory directives for providing notice of intent to file suit.

In addition to the violations set forth above, this **Notice** is intended to cover all violations of Proposition 65 as evidenced by information which becomes available to River Watch after the date of this **Notice**.

River Watch is a non-profit corporation dedicated to the protection and enhancement of the waters of the State of California including all rivers, creeks, streams and groundwater in Northern California. River Watch is organized under the laws of the State of California. Its address is 74 Main Street, Suite D., P.O. Box 1360, Occidental, CA, 95465; its telephone number is (707) 874-2579.

The violations of ARCO as set forth in this **Notice** affect the health and enjoyment of members of River Watch who reside and recreate in the affected watershed areas. The members of River Watch use the watershed for domestic water supply, agricultural water supply, recreation, sports, fishing, swimming, shellfish harvesting, hiking, photography, nature walks and the like. Their health, use and enjoyment of this natural resource is specifically impaired by these violations of Proposition 65.

Notice of Intention to File Suit - Proposition 65
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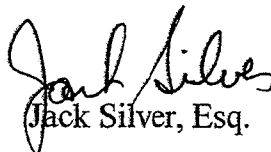
River Watch has retained legal counsel to represent them in this matter. All communications should be addressed to:

Northern California Environmental Defense Center
c/o Jack Silver, Esq.
Silver & Silver Law Office
902 Stevenson Street
Santa Rosa, CA 95404
Tel. (707) 527-8811
Fax (707) 527-5443

River Watch believes this **Notice** sufficiently states the grounds for filing suit under the statutory and regulatory provisions of Proposition 65 as to each of the four sites referenced above. At the close of the notice periods or shortly thereafter, River Watch intends to file a suit against ARCO under Proposition 65 for each of the violations as alleged herein, with respect to the existing conditions at each of the four gasoline service station sites referenced above.

During the notice period, however, River Watch is willing to discuss effective remedies for the violations noted in this **Notice**. If ARCO wishes to pursue such discussions in the absence of litigation, it is suggested that ARCO initiate the discussions immediately so that they may be completed before the end of the notice period. River Watch does not intend to delay the filing of a lawsuit if discussions are continuing when the notice period ends.

Very truly yours,


Jack Silver, Esq.

cc:

Christie Todd Whitman, Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Mail Code 3213A
Washington, D.C. 20460

Notice of Intention to File Suit - Proposition 65

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Wayne Nastri, Regional Administrator
U.S. Environmental Protection Agency Region 9
75 Hawthorne St.
San Francisco, CA 94105

Celeste Cantù, Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, California 95812-0100

Mark Leary, Executive Director
Calif. Integrated Waste Mgmt. Board
1001 "I" Street
Sacramento, CA 95814

Atlantic Richfield Company
c/o C T Corporation System
Registered Agent for Service
818 West Seventh Street
Los Angeles, CA 90017

Atlantic Richfield Company
200 E. Randolph Drive
Chicago, IL 60601

Appendix A

OFFICE OF ENVIRONMENTAL HEALTH
HAZARD ASSESSMENT
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

THE SAFE DRINKING WATER AND TOXIC
ENFORCEMENT ACT OF 1986
(PROPOSITION 65): A SUMMARY

The following summary has been prepared by the Office of Environmental Health Hazard Assessment, the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. The reader is directed to the statute and its implementing regulations (see citations below) for further information.

Proposition 65 appears in California law as Health and Safety Code Sections 25249.5 through 25249.13. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 22 of the California Code of Regulations, Sections 12000 through 14000.

WHAT DOES PROPOSITION 65 REQUIRE?

The "Governor's List." Proposition 65 requires the Governor to publish a list of chemicals that are known to the State of California to cause cancer, or birth defects or other reproductive harm. This list must be updated at least once a year. Over 550 chemicals have been listed as of May 1, 1996. Only those chemicals that are on the list are regulated under this law. Businesses that produce, use, release or otherwise engage in activities involving those chemicals must comply with the following:

Clear and reasonable warnings. A business is required to warn a person before "knowingly and intentionally" exposing that person to a listed chemical. The warning given must be "clear and reasonable." This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed. Exposures are exempt from the warning requirement if they occur less than twelve months after the date of listing of the chemical.

Prohibition from discharges into drinking water. A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Discharges are exempt from this requirement if they occur less than twenty months after the date of listing of the chemical.

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. The law exempts:

Governmental agencies and public water utilities. All agencies of the federal, State or local government, as well as entities operating public water systems, are exempt.

Businesses with nine or fewer employees. Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees.

Exposures that pose no significant risk of cancer. For chemicals that are listed as known to the State to cause cancer ("carcinogens"), a warning is not required if the business can demonstrate that the exposure occurs at a level that poses "no significant risk." This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific "no significant risk" levels for more than 250 listed carcinogens.

Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause birth defects or other reproductive harm ("reproductive toxicants"), a warning is not required if the business can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the "no observable effect level (NOEL)," divided by a 1,000-fold safety or uncertainty factor. The "no observable effect level" is the highest dose level which has not been associated with an observable adverse reproductive or developmental effect.

Discharges that do not result in a "significant amount" of the listed chemical entering into any source of drinking water. The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a "significant amount" of the listed chemical has not, does not, or will not enter any drinking water source, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A "significant amount" means any detectable amount, except an amount that would meet the "no significant risk" or "no observable effect" test if an individual were exposed to such an amount in drinking water.

HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys (those in cities with a population exceeding 750,000). Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. A notice must comply with the information and procedural requirements specified in regulations (Title 22, California Code of Regulations, Section 12903). A private party may not pursue an enforcement action directly under Proposition 65 if one of the governmental officials noted above initiates an action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court of law to stop committing the violation.

FOR FURTHER INFORMATION...

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900.

§ 14000. Chemicals Required by State or Federal Law to Have Been Tested for Potential to Cause Cancer or Reproductive Toxicity, but Which Have Not Been Adequately Tested As Required.

(a) The Safe Drinking Water and Toxic Enforcement Act of 1986 requires the Governor to publish a list of chemicals formally required by state or federal agencies to have testing for carcinogenicity or reproductive toxicity, but that the state's qualified experts have not found to have been adequately tested as required [Health and Safety Code 25249.8(c)].

PROOF OF SERVICE

I am employed in the County of Sonoma, State of California. I am over the age of eighteen years and not a party to the within action. My business address is 902 Stevenson Street, Santa Rosa, CA 95404.

On the date listed below, I served the following described document:

Notice of Intent to File Suit Under California Safe Drinking Water and Toxic Enforcement act (Proposition 65) - Dated May 8, 2003

on the following parties by placing a true copy in a sealed envelope, addressed as follows:

Christie Todd Whitman, Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Mail Code 3213A
Washington, D.C. 20460

Wayne Nastri, Regional Administrator
U.S. Environmental Protection Agency Region 9
75 Hawthorne St.
San Francisco, CA 94105

Celeste Cantù, Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, California 95812-0100

Mark Leary, Executive Director
Calif. Integrated Waste Mgmt. Board
1001 "T" Street
Sacramento, CA 95814

Atlantic Richfield Company
c/o C T Corporation System
Registered Agent for Service
818 West Seventh Street
Los Angeles, CA 90017

Atlantic Richfield Company
200 E. Randolph Drive
Chicago, IL 60601

R.A. Malone, President/Owner
Atlantic Richfield Company
333 S. Hope St.
Los Angeles, CA 90071

[X] (BY MAIL) I placed each such envelope, with postage thereon fully prepaid for first-class mail, for collection and mailing at Santa Rosa, California, following ordinary business practices. I am readily familiar with the practices of Northern California Environmental Defense Center for processing of correspondence; said practice being that in the ordinary course of business, correspondence is deposited with the United States Postal Service the same day as it is placed for processing.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct, and that this declaration was executed on May 9, 2003 at Santa Rosa, California.


JILL WHITE

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PROOF OF SERVICE

I am employed in the County of Sonoma, State of California. I am over the age of eighteen years and not a party to the within action. My business address is 713 Spring Street, Santa Rosa, CA 95404.

On May 5, 2004, I served the following described document(s):

First Amended Complaint for Injunctive Relief, Civil Penalties, Restitution and Remediation

on the following parties by placing a true copy in a sealed envelope, addressed as follows:

Michael Leavitt, Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Mail Code 3213A
Washington, D.C. 20460

John Ashcroft, U.S. Attorney General
Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

☒ (BY MAIL) I placed each such envelope, with postage thereon fully prepaid for first-class mail, for collection and mailing at Santa Rosa, California, following ordinary business practices. I am readily familiar with the practices of Northern California Environmental Defense Center for processing of correspondence; said practice being that in the ordinary course of business, correspondence is deposited with the United States Postal Service the same day as it is placed for processing.

☐ (BY PERSONAL SERVICE) I caused each envelope to be delivered by hand to the address(es) noted above.

☐ (BY FACSIMILE) I caused the above referenced document(s) to be transmitted by Facsimile machine (FAX) to the number indicated after the address(es) noted above.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct, and that this declaration was executed on May 5, 2004 at Santa Rosa, California.


RHONDA BOLLA